

(iv) For acquisition, had a pre-event fair market value of less than \$300,000 just before the disaster event. Properties submitted for buyout under Pub. L. 106-113 (the original Hurricane Floyd supplemental buyout program) are exempt from this policy, with the limitation that in no case does the Federal share or offer for any such property exceed \$225,000; and

(v) Served as the principal residence for the owner. For multifamily units such as condominium buildings, all units within the structure should be principal residences of the owners and not sublet.

(3) Conform with 44 CFR part 9, Floodplain Management and Protection of Wetlands; 44 CFR part 10, Environmental Considerations; and any applicable environmental and historic preservation laws and regulations.

(c) For acquisition projects, an owner who is not a United States citizen or qualified alien may receive current fair market value for his or her property. He or she may not receive additional amounts for pre-event fair market value.

(d) Funds available under Pub. L. 106-113 (the original Floyd supplemental appropriation) are limited to use for acquisition purposes only.

§ 209.7 Priorities for project selection.

(a) It is the State's responsibility to identify and select eligible buyout projects for funding under the supplemental grant program. All funded projects must be consistent with the State Hazard Mitigation Plan. The mitigation planning process or any other appropriate means may identify buyout and elevation projects.

(b) States will set priorities in their State mitigation plan to use as the basis for selecting projects for funding. The State's priorities will address, at a minimum, substantially damaged properties, repetitive loss target properties, and such other criteria that the State deems necessary to comply with the law. States and subgrantees are to give priority consideration to projects for acquisition or elevations of repetitive loss properties, and must include all el-

igible repetitive loss properties in the projects submitted to us for funding.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001, as amended at 74 FR 15353, Apr. 3, 2009]

§ 209.8 Application and review process.

(a) *General.* This section describes the procedures to be used by the State in submitting an application for funding under the Supplemental Property Acquisition and Elevation Assistance program. Under this program, the State is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part.

(b) *Timeframes.* We will establish deadlines for States to submit applications, and States will set local application deadlines. States may begin forwarding applications to us immediately upon Notice of Availability of Funds and must forward all applications not later than the date set by the Regional Administrator. States must provide to us the information described below in paragraph (c) of this section for each property proposed for acquisition or elevation in support of the supplemental allocation requested and within the timeframe that we establish. We will verify project eligibility estimates provided by States in order to assure that all projects meet the criteria for the supplemental grant awards. We will perform an independent verification of this information for not less than 50 percent of the properties submitted.

(c) *Format.* The State will forward its application to the Regional Administrator. The Application will include: a Standard Form (SF) 424, Application for Federal Assistance; FEMA form 20-15, Budget Information—Construction Programs; Project Narrative (section 209.8(c)—community project applications (buyout plans) selected by the State); FEMA form 20-16, 20-16b and 20-16c Assurances and Certifications; Standard Form LLL, Disclosure of Lobbying Activities; FEMA form 20-10, Financial Status Report; the Performance/Progress Report format; and the State's certification that the State has reviewed all applications and that they meet program eligibility criteria. The

Project Narrative (community project applications) will include:

- (1) Community applicant information, including contact names and numbers;
- (2) Description of the problem addressed by the proposed project;
- (3) Description of the applicant's decision-making process, including alternatives considered;
- (4) Project description, including property locations/addresses and scope of activities;
- (5) Project cost estimate and match source;
- (6) For acquisition projects, open space use description and maintenance assurance;
- (7) Risk and cost-effectiveness information, or State's benefit-cost analysis;
- (8) Environmental and historic preservation information including
 - (i) Whether the property is now or ever has been used for commercial or industrial purposes, and
 - (ii) Any information regarding historic preservation that is readily available;
- (9) Attachments for each property as follows:
 - (i) A photograph of the structure from the street;
 - (ii) Owner's name;
 - (iii) Complete address, including zip code;
 - (iv) Latitude and longitude;
 - (v) The date of construction;
 - (vi) Proximity to the 100-year floodplain;
 - (vii) Panel and date of the applicable Flood Insurance Rate Map, if any;
 - (viii) The elevation of the first habitable floor and an estimate of the depth of flooding in the structure;
 - (ix) The estimated pre-event fair market value of the home. Applicants will estimate the value of properties using the best available information, such as inspections, public records and market values of similar properties in similar neighborhoods to arrive at a pre-event fair market value that reflects what a willing buyer would have paid a willing seller had the disaster not occurred. If tax assessment data are used as the basis, the applicant should add the relevant adjustment percentage for that jurisdiction to ad-

just the tax assessment to the current fair market value. These adjustment data should be obtained from the jurisdiction's tax assessor's office. For any jurisdictions where the adjustment factor is over 25 percent, applicants should include a justification for the high adjustment factor. Applicants should not include any other project costs in the property values. These costs will be reflected elsewhere;

(x) Indication whether flood insurance was in force at the time of the loss, and policy number, if available.

(xi) Indications that the property will meet the definition of uninhabitable:

(A) Substantial damage determination, and name and title of determining official, or if not yet determined then:

(1) For manufactured homes (mobile homes), inundation of 1 foot or more of water above the first habitable floor or other evidence of substantial damage; or

(2) For permanent structures other than manufactured homes, inundation of 5 feet or more of water above the first above-ground habitable floor or other evidence of substantial damage. Habitable floors do not include basements.

(B) Were red- or yellow-tagged and declared uninhabitable due to environmental contamination by floodwaters, or otherwise determined to be uninhabitable by a State or local official under current codes or ordinances; or

(C) Were demolished due to damage or environmental contamination by floodwaters.

(xii) Information regarding whether the structure is on the NFIP repetitive loss list (provide NFIP Repetitive Loss Property Locator Number, if available); and

(xiii) Observations on whether acquisition or elevation of the structure may result in a mixture of vacant lots and lots with structures remaining on them; and

(10) *FEMA review and approval.* We will review and verify the State's eligibility determination and either approve, deny, or request additional information within 60 days. The Regional Administrator may extend this timeframe if complicated issues arise. We

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have final approval authority for funding of all projects.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001; 74 FR 15353, Apr. 3, 2009]

§ 209.9 Appeals.

The State may appeal any decision that we make regarding projects submitted for funding in the Supplemental Property Acquisition and Elevation Assistance program. The State must submit the appeal in writing to the Regional Administrator and must include documentation that justifies the request for reconsideration. The appeal must specify the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent. The applicant must appeal within 60 days of the applicant's receipt of our funding decision. The State must forward any appeal from an applicant or subgrantee with a written recommendation to the Regional Administrator within 60 days of receipt. Within 90 days following the receipt of an appeal, the Regional Administrator will notify the State in writing as to the new decision or the need for more information.

§ 209.10 Project implementation requirements.

Subgrantees must enter into an agreement with the State, with the written concurrence of the Regional Administrator, that provides the following assurances:

(a) The subgrantee will administer the grant and implement the project in accordance with program requirements, 44 CFR part 13, the grant agreement, and with applicable Federal, State, and local laws and regulations.

(b) The State and subgrantee will administer the grant in an equitable and impartial manner, without discrimination on the grounds or race, color, religion nationality, sex, age, or economic status in compliance with section 308 of the Stafford Act (42 U.S.C. 5151) and Title VI of the Civil Rights Act. In implementing the grant, the State and the subgrantee will ensure that no discrimination is practiced.

(c) The State and subgrantee will ensure that projects involving alterations

to existing structures comply with all applicable State and local codes.

(d) The State and subgrantee will ensure that projects comply with applicable State and local floodplain management requirements. Structures will be elevated to the Base Flood Elevation.

(e) Property owners participating in acquisition projects may receive assistance up to the pre-event fair market value of their real property, except as limited by the eligibility criteria.

(f) The subgrantee will establish a process, which we must approve, whereby property owners participating in acquisition projects may request a review of the appraisal for their property, or request a second appraisal.

(g) The State will reduce buyout assistance by any duplication of benefits from other sources. Such benefits include, but are not limited to, payments made to the homeowner for repair assistance; insurance settlements; legal settlements; Small Business Administration loans; and any other payments made by any source to address the property loss unless the property owner can provide receipts showing that the benefits were used for their intended purpose to make repairs to the property.

(h) Increased Cost of Compliance coverage benefits under the National Flood Insurance Program (NFIP) may be used to match elevation or acquisition and relocation projects. Increased Cost of Compliance claims can only be used for NFIP-approved costs; these can then be applied to the project grant match. This coverage does not pay for property acquisition, but can pay demolition or structure relocation.

(i) The following restrictive covenants must be conveyed in the deed to any property acquired, accepted, or from which structures are removed ("the property"):

(1) The property must be dedicated and maintained in perpetuity for uses compatible with open space, recreational, or wetlands management practices; and

(2) No new structure(s) will be built on the property except as indicated in this paragraph:

(A) A public facility that is open on all sides and functionally related to a